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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Implementation of Section 309(j)) PP Docket No. 93-253
 of the Communications Act)
 Competitive Bidding)

COMMENTS OF COX ENTERPRISES, INC

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits comments in response to the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking ("Notice") regarding the application of competitive bidding to the assignment of radio microwave spectrum. The Commission was granted authority to employ auction procedures to award initial licenses for use of radio spectrum in the Omnibus Budget Reconciliation Act of 1993 ("Reconciliation") which added a new section 309(j) to the Communications Act of 1934.^{1/} Pursuant to this statutory authority, the Commission was directed to institute a rulemaking proceeding in order to develop and adopt competitive bidding regulations by March 8, 1994 and to begin issuing Personal Communications Services ("PCS") licenses by auction within two months of the March deadline.

I. INTRODUCTION

Cox is a broadly diversified company with significant interests in cable television, radio and

^{1/} As amended, 47 U.S.C. §§ 151-713.

television broadcasting, newspaper publishing, automobile auctions and other businesses. In light of its varied holdings, Cox views the application of competitive bidding to the licensing of certain radio spectrum with considerable interest.

As the Commission is aware, Cox has been active in the development of PCS since its inception, conducting advanced technological and market tests in diverse geographic areas. In particular, Cox was the first company with cable television interests to file PCS experimental license applications and to demonstrate the technical feasibility of linking PCS microcells via cable television plant. Cox's continuing PCS testing has demonstrated that cable television distribution plant is ideally suited to provide microcell interconnection and continuous RF coverage, efficiently providing the promise of cost effective, full featured alternative to the local exchange that can also provide mass market mobile service.^{2/}

While the Notice encompasses auction procedures and proposals for qualifying spectrum other than PCS, because the Commission's most pressing task is to implement auction procedures for PCS, Cox focuses its comments primarily on PCS. Cox considers the auction procedures to

^{2/} As a result of its innovative efforts in developing and demonstrating the feasibility of cable television-based PCS, Cox was awarded a tentative pioneer's preference in October 1992.

be crucial to the future development of the PCS marketplace. Unless the competitive bidding process can efficiently place the licenses in the hands of companies who are technologically and financially capable of deploying PCS equipment and services as a competitive wireless service, the growth and acceptance of these new, innovative services will be threatened.

Cox agrees with the Notice's expressed intent to promulgate auction rules and procedures that are simple and easy to administer. Because the statutory implementation timeframe is tight, Cox recommends that the auction processes for PCS be as straight-forward and as uncomplicated as feasible.

II. CONGRESS RECOGNIZED THAT PIONEER PREFERENCES ARE ON A SEPARATE PROCESSING TRACK.

As part of the Commission's consideration of spectrum auctions, the Commission should make clear, consistent with existing pioneer preference rules, that PCS pioneer preference applications are not mutually exclusive applications and, therefore, as Congress recognized, are on a separate processing track.^{3/} The Reconciliation provided

^{3/} The Commission is limited by statute to apply competitive bidding for radio spectrum only if three conditions are satisfied: (a) there are mutually exclusive applications, (b) they are initial license applications, and (c) they are for radio communications services that principally use their spectrum to provide service to subscribers for compensation. See Notice at ¶ 2; Reconciliation Act, Pub. L. No. 103-66, Title VI, § 6002(j), 107 Stat. 312, 388 (1993).

the Commission with explicit authority to continue to award pioneer preferences to innovators despite adoption, in the same legislation, of statutory authority for competitive bidding.^{4/}

Cox recognizes that the Commission has instituted a new proceeding to examine possible changes to the pioneer preference rules and that this review was prompted by the Commission's receipt of competitive bidding authority.^{5/} While the Commission is free to adopt changes to the pioneer preference policy prospectively if it is convinced that authority to perform spectrum auctions should modify the scope of the pioneer preference program, Cox submits that the Commission cannot and should not retroactively apply any such rule changes to previously announced preference awards.

III. AUCTION DESIGN

The Notice seeks comment on the sequence of bidding for PCS licenses, noting that oral, sealed or electronic bidding may be conducted either sequentially or

^{4/} The new competitive bidding authority was modified by the following language: "nothing in this subsection, or in the use of competitive bidding shall ... be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology." Reconciliation §6002(j)(6)(G).

^{5/} See Notice of Proposed Rulemaking, ET Docket No. 93-266 (FCC 93-477), adopted October 21, 1993, released October 21, 1993.

simultaneously.^{6/} Cox believes that auction participants will be in the best position to evaluate the business prospects for individual markets and make informed judgments in the bidding process if the Commission uses sequential auctions for PCS licensing. Sequential bidding permits participants to consider licenses won in adjacent and/or related markets and factor these results into subsequent bids. The Notice is correct in its observation that bidding parties may only value licenses in certain markets if they already know the outcome of the bidding in previous markets.^{7/}

Cox recommends that the Commission consider auctioning the available MTA blocks and announcing the results prior to auctioning the BTA licenses available within the MTA. This procedure will facilitate the efficient aggregation of geographic service areas as prospective PCS providers make their initial market selections. Because it is anticipated that PCS operators will focus on local as well as regional mobility, these auction rules will facilitate the dissemination of critical MTA valuation information, permitting the market-by-market

6/ See Notice at ¶51. Sequential bidding permits auction participants to submit bids after the results of proceeding bids are determined. In contrast, simultaneous bidding requires auction participants to submit all bids for all desired licenses simultaneously. The auction results, therefore, are not known until all bids are accepted and subsequently reviewed.

7/ See Notice at ¶51.

aggregation of spectrum in contiguous geographic service areas.

Cox takes no position at this time on the desirability of nationwide combinatorial bidding, although nationwide bids would presumably include all 51 MTAs, a predefined license grouping. Nevertheless, Cox does not support the proposal to allow bidding participants to select combinatorial market groupings. If auction participants are free to specify diverse groupings of individual markets in a combinatorial bid, the Commission will have the nearly impossible task of comparing bids that are not directly comparable. The unfettered ability to aggregate nearly any combination of BTAs and MTAs will create severe valuation problems for the Commission and raise the prospect that portions of spectrum will be left behind, without any bidders.

Unless the markets subject to combinatorial competitive bidding are clearly predefined, the Commission will be unable to compare bids. Cox believes that the specific, predefined MTA and BTA markets are preferable to permitting auction participants to "create" their own geographic service areas.

IV. AUCTION APPLICATION PROCESS

Cox supports the Notice's general proposals for auction procedures having to do with pre-auction public notices and the letter-perfect application screening. Cox

believes, however, that a number of matters raised in the Notice should be clarified further to avoid confusion or the potential for post-auction bidder disqualification.

The Notice specifically requests comment on the need to submit both short and long form applications during a filing window prior to the PCS auctions. Although Cox believes that the proposed application process provides an efficient method for substantiating the qualifications of auction applicants, Cox recommends that no site specific engineering information be filed prior to the auctions. Requiring the submission of such information for each market before bids are accepted would unnecessarily burden auction participants by forcing them to investigate, analyze and develop specific engineering and frequency reuse proposals that may never be considered if the desired licenses are not obtained.^{8/}

In addition, the pre-application Notice is unclear as to the application process for participation in the bidding for the two 30 MHz blocks of spectrum in each service area. The proposed auction rules do not specify whether a bidding party must submit multiple applications to qualify to bid on the 30 MHz spectrum in Block B if it loses

^{8/} Further, since unsuccessful bidders will likely decide to bid for the remaining spectrum blocks in the market where they were initially unsuccessful, any engineering proposal with specific frequency combination and reuse information would not apply to subsequent spectrum blocks offered in the same market.

the bidding on Block A. Cox recommends that a single application be considered as an application for all spectrum blocks within a market area. Assuming that the applications are otherwise identical, this procedure would avoid wasteful, duplicative filings and thereby conserve the resources of both potential bidders and the Commission staff.

V. AUCTIONS FOR SPECIFIC SERVICES

The Notice anticipates that its competitive bidding procedures will apply to a wide variety of radio-based services rendered to the public. In particular, the Notice proposes that even licenses of spectrum used as "intermediate links" in the provision of continuous, end-to-end service to subscribers could be subject to competitive bidding.^{9/}

Cox believes that the Notice's proposal to apply spectrum auctions to Community Antenna Relay Services ("CARS") and Point-to-Point Microwave Services, however, is misplaced and lacks congressional authority. As recognized in the Notice, Congress authorized competitive bidding in situations where mutually exclusive applications are accepted for filing for initial licenses to provide services to paying customers.^{10/}

^{9/} See Notice at ¶29.

^{10/} See Section 309(j)(2) of the revised Communications Act.

CARS and point-to-point microwave services, however, are not services for which specific frequencies are assigned in blocks for the rendition of service to the public on a subscription basis. Rather, they are assigned in single, distinct channels, subject to detailed non-interference regulations.

In fact, the prior coordination process required under the Commission's rules for each of the respective services assures that no mutually exclusive applications are filed.^{11/} Because the basic statutory requirements for the application of competitive bidding are unfulfilled, auctions for these services would be inappropriate. Even assuming these services could be auctioned, an auction would attract speculators more intent on extracting payment from those legitimate operators whose expansion they block, delaying service to the public and inflating costs without any public benefit.

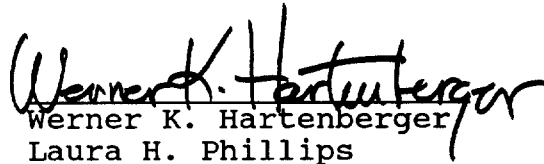
^{11/} See 47 C.F.R. §§ 78.13(c), 78.18(j), 78.19(a); 47 C.F.R. §§ 21.700-21.711 (specifying required pre-application prior coordination procedures). Also See Comments of the Joint Parties, PP Docket No. 93-253, filed November 10, 1993.

V. CONCLUSION

Cox supports implementation of spectrum auctions as follows. Congress recognized that pioneer preference applications are not mutually exclusive and therefor are to be placed on a separate processing track. Cox supports the Notice's auction processing proposals having to do with pre-auction public notices and letter perfect application screening. Finally, Cox urges that the Commission clarify that CARs and other point-to-point services are not appropriate services for the application of competitive bidding.

Respectfully submitted,

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